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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14
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16 ANDRE V. JACKSON,
17 Plaintiff,
18 v.
19 H. GRIFFIN, et al.,
20 Defendant.
21
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23 No. C 10-5489 RS (PR)
24 **ORDER REOPENING ACTION;**
25 **DISMISSING COMPLAINT WITH**
26 **LEAVE TO AMEND**
27
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29 This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983 by a *pro se* state
30 prisoner. The complaint was dismissed owing to plaintiff's failure to file a timely application
31 to proceed *in forma pauperis*. Plaintiff having filed an complete application, the action is
32 hereby REOPENED. The Court now reviews the complaint pursuant to 28 U.S.C.
33 § 1915A(a).

34 **DISCUSSION**
35

36 **A. Standard of Review**

37 A federal court must conduct a preliminary screening in any case in which a prisoner
38 seeks redress from a governmental entity or officer or employee of a governmental entity.
39 See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and
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1 dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may
2 be granted or seek monetary relief from a defendant who is immune from such relief. *See id.*
3 § 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica*
4 *Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

5 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
6 to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)
7 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
8 plausibility when the plaintiff pleads factual content that allows the court to draw the
9 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
10 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
11 conclusions cast in the form of factual allegations if those conclusions cannot reasonably be
12 drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th
13 Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
14 elements: (1) that a right secured by the Constitution or laws of the United States was
15 violated, and (2) that the alleged violation was committed by a person acting under the color
16 of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

17 **B. Legal Claims**

18 Plaintiff alleges that defendant, an employee of Pelican Bay State Prison, has failed to
19 give him material from the prison law library necessary to plaintiff. Plaintiff’s allegations do
20 not contain sufficient factual allegations to state a claim for relief. Plaintiff must name
21 specific materials he asked for and was refused, the persons directly involved in these
22 actions, and how the denial of such materials resulted in injury to him. Accordingly, the
23 complaint is DISMISSED with leave to amend. Plaintiff shall file an amended complaint
24 within 30 days from the date this order is filed. The first amended complaint must include
25 the caption and civil case number used in this order (10-5489 RS (PR)) and the words FIRST
26 AMENDED COMPLAINT on the first page. Because an amended complaint completely
27 replaces the previous complaints, plaintiff must include in his first amended complaint all the
28

1 claims he wishes to present and all of the defendants he wishes to sue. *See Ferdik v.*
2 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from
3 the prior complaint by reference. Failure to file an amended complaint in accordance with
4 this order will result in dismissal of this action without further notice to plaintiff.

5 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
6 informed of any change of address by filing a separate paper with the clerk headed "Notice
7 of Change of Address." He must comply with the Court's orders in a timely fashion or ask
8 for an extension of time to do so. Failure to comply may result in the dismissal of this action
9 pursuant to Federal Rule of Civil Procedure 41(b).

10 Plaintiff's motion to proceed *in forma pauperis* is GRANTED. The Clerk is directed
11 to reopen the action.

12 **IT IS SO ORDERED.**

13 DATED: January 7, 2011



RICHARD SEEBORG
United States District Judge